

House Energy and Commerce Committee
Subcommittee on Oversight and Investigations Hearing:
“Thoroughbred Horse Racing Jockeys and Workers: Examining On-Track Injury
Insurance and Other Health and Welfare Issues”
May 9, 2006

Testimony of Barry Broad, National Legal Counsel
The Jockeys’ Guild

Chairman Whitfield and Members of the Committee:

My name is Barry Broad and I am legal counsel and legislative representative of the Jockeys’ Guild in California. My firm was hired by former Guild National Manager John Giovanni in 1995 and I continued to represent the Jockeys’ Guild right through last fall. A few days after Wayne Gertmenian’s testimony before your Committee, I severed my relationship with the Guild, feeling that I could no longer represent its membership in good conscience so long as Dr. Gertmenian and his management firm, Matrix Capital Associates, were employed by the Jockeys’ Guild. I then volunteered my services to those members of the Jockeys’ Guild Senate and Board of Directors who wished to remove Dr. Gertmenian. I was present during the emergency meeting of the Jockeys’ Guild that was held by telephone conference call which resulted in the termination of Dr. Gertmenian. I was then appointed by the new interim Board of Directors as co-General Counsel of the Guild. Thereafter, I was in constant contact with the Monrovia Police Department and the FBI in the chaotic days following Dr. Gertmenian’s removal to try to help insure that evidence was preserved, and, since then, I, along with many others, have been working on a daily basis to help this organization recover so that it can do its job of vigorously advancing the interests of professional jockeys.

Today, I will fill the Committee in on what we now know about the conduct of Dr. Gertmenian and his apparent alter ego, Matrix Capital Associates. It has fallen on my

shoulders to assist with the various investigations that have arisen from Dr. Gertmenian's tenure. It is the position of our Board of Directors that, only through total openness and transparency, can this organization restore its credibility with your Committee, state regulators, the racing industry, and its own members.

First of all, it was immediately obvious that Dr. Gertmenian and the Guild's then General Counsel, Lloyd Ownbey, failed on a massive level to comply with your Committee's subpoena. I set about establishing a cooperative, professional, and mutually respectful relationship with your staff and began to send documents that were responsive to the subpoena to Washington. To date, we have sent thousands of pages of documents and I have invited your staff to come to the Guild's office in California to inspect documents and interview employees. Until your investigation is formally concluded, you have our commitment that we will continue to provide your staff broad access to the Guild's books and records.

The following are the major findings of what occurred during the tenure of Dr. Gertmenian:

1. There was a systematic effort to mislead the Board of Directors and Membership about the financial state of the Guild. Dr. Gertmenian stated repeatedly that the Guild had accumulated a \$3.5 million "war chest". On the day he was fired, he told the Senators that the Guild's finances had never been better and again insisted that it had a \$3.5 million war chest. He said this when he knew full well that the Guild's assets were nearly totally depleted. In another example of this pattern of misleading conduct, Dr. Gertmenian hired an attorney to represent the Guild before this Committee and told members of his Board of Directors that another labor organization was paying for the cost of that attorney when, in fact, the Guild paid for the cost. As this Committee uncovered, Dr. Gertmenian even attempted to assign an apparently inflated value to the services of consultants and even volunteers as a means of justifying the payments made to Matrix.

2. On the day that Dr. Gertmenian was fired, he caused more than \$200,000 in checks to be issued to himself and Mr. Albert Fiss, leaving the Guild with just a few thousand dollars in the bank. These checks were written in direct violation of financial controls that were imposed by the Board of Directors prohibiting checks, other than those to disabled riders, to be issued in excess of \$200 without the express written approval of the Treasurer. He even arranged that employees loyal to him would receive lay-off notices, so that they would qualify for unemployment insurance benefits when they were, in fact, voluntarily quitting employment. This could have the effect of not only raising the unemployment insurance rates for the Guild but for past employers of those employees.

3. Over the previous months and years, restricted trust accounts had been spent down that should have been maintained. These included trust accounts for health insurance reserves, which needed to be maintained in order to preserve the fiscal integrity of the Guild's self-funded health insurance plan. Moreover, approximately \$500,000 was depleted from the savings accounts for individual jockeys that had been deposited with the Guild as overpayment of dues. Some of these personal savings accounts had balances of thousands of dollars and, at this point, until we generate a budgetary surplus, we can only honor requests for withdrawals on a partial basis when funds are available.

4. Matrix Capital Associates was paid hundreds of thousands of dollars while Dr. Gertmenian was being paid a salary for full-time employment. We suspect that little of value was delivered by Matrix for the large sums of money that were paid out. In addition, associates of Dr. Gertmenian were paid tens of thousands of dollars for consulting fees that, apparently, resulted in the delivery of few actual services.

5. Dr. Gertmenian offered certain select members of the Guild free health insurance, apparently in order to curry internal political support. Such promises were made without the knowledge of the Board of Directors.

6. Dr. Gertmenian allowed jockeys who had failed to pay health insurance premiums to remain covered by the plan. As a result, the amount of unpaid premiums reached a level

of approximately \$700,000. This, of course, meant that there was cost shifting to other jockeys, who were actually paying their premiums, causing the Guild's financial situation to worsen.

7. Guild General Counsel Ownbey failed to inform his Board of Directors and apparently offered no legal advice to them whatsoever about the plainly oppressive terms of the personal services agreement with Dr. Gertmenian and Matrix. Mr. Ownbey appeared to act as Dr. Gertmenian's personal attorney, not that of the Guild. Incidentally, when your Committee's subpoenas were delivered to the Guild and Matrix, I called Mr. Ownbey and told him that, in my opinion, Dr. Gertmenian needed to secure separate legal counsel, since his interests and that of the Guild were separate and that Mr. Ownbey needed to represent the Guild's interests separate and apart from that of the personal interests of Dr. Gertmenian and Matrix. That advice was evidently ignored.

8. There were numerous acts of self-dealing and favoritism by Dr. Gertmenian, including charging meal and entertainment expenses to the Guild when he was not traveling on Guild business. Dr. Gertmenian caused the Guild to pay for the office rent of the space adjoining the Guild's office which was occupied by Matrix Capital Associates, a separate business entity, resulting in the Guild paying roughly double the rent for the space that it used. As if that weren't enough, Matrix added a "maintenance fee" to the rent. However, there is no evidence that any maintenance services were actually provided by Matrix. Indeed, there was no written lease agreement between the Guild and Matrix or between the Guild and the property owner. Gertmenian also apparently permitted select employees to be reimbursed for personal expenses, including car repairs, dry cleaning, groceries, and other personal expenses.

9. While Dr. Gertmenian professed to be an expert in business operations, he failed to operate the Guild in a manner consistent with adherence to even the most common and well understood business principals. For example, apparently during the entire period of his tenure, the Guild did not have a workers' compensation insurance policy in place to cover its own employees. This exposed the Guild to enormous potential civil liability. In

California, the failure to secure workers' compensation insurance is a criminal offense. Fortunately, no employee of the Guild suffered a work related injury. Similarly, the Guild routinely failed to enter into written agreements for personal services agreements for its consultants and apparently did not even have a fee agreement with its General Counsel, Mr. Ownbey, contrary to California law and ethical standards. Matrix Capital Associates was paid a monthly fee, but did not submit invoices and did not specify what services were being provided.

10. When Dr. Gertmenian was fired and the new management had access to the accounting system, it was apparent that basic accounting practices had been ignored. We did not even know which jockeys had paid their health insurance premiums and which had not. Large amounts of data related to jockey mounts had simply not been entered into the system, thereby making it impossible to ascertain how much money racetracks had forwarded to the Guild in the form of dues and health insurance premiums.

I could go on and on, but I believe that you have the flavor of what occurred under the tenure of Dr. Gertmenian.

I am available to answer any questions you might have.

Thank you for allowing me to testify today.